IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 115 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

LEUVA PATEL KELWANI MANDAL

Appearance:

1. INCOME TAX REFERENCE No. 115 of 1987

MR BB NAYAK FOR MR MANISH R BHATT for Petitioner.

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 12/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

At the instance of the revenue, the following question has been referred for the opinion of this Court in respect of the assessment year 1982-83 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the provisions of Section 13(i)(b) of the Income-tax Act,1961 were not applicable and the assessee trust was entitled to exemption as claimed ?"

2 We have heard Mr.B.B.Nayak, learned Counsel for the Revenue. Though served, none appears for the respondent-assessee.

3 The assessee is a trust and its main object is to build hostels for girls of the Leuva Patel community. The assessee claimed exemption under sections 11 and 12 of the Income Tax Act,1961 (hereinafter referred to as 'the Act') on the ground that it was not created for the benefit of any particular religious community or caste. The assessing officer however, held that the assessee's case was covered by the provisions of Section 13(1)(b) of the Act and hence the claim for exemption was rejected. The Appellate Assessment Commissioner held in favour of the assessee in view of the decision of the Tribunal in the case of one another assessee. The Tribunal also followed the said decision in the case of Shri Leuva Patel Kelavani Mandal, Jetpur in I.T.A.No.230 and 251/Ahd/1984 decided on 9/11/1984 and rejected the appeal of the revenue.

4 In view of the provisions of Explanation 2 to Section 13 of the Act to the effect that a trust or institution created or established for the benefit of scheduled castes, backward classes, scheduled tribes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a religious community or caste within the meaning of clause (b) of sub-section (1) of Section 13, there is no need to consider whether the decision of the Tribunal that the institution was not for the benefit of a particular community or caste is correct.

5 Since all the authorities have proceeded on the basis that the main object of the trust is to build hostel for the girls, once that fact is taken note of it is of little consequence whether the hostels are to be built for girls of any particular community or generally

for girls of all communities.

6 We are accordingly of the opinion that though the decision of the Tribunal that the assessee trust was entitled to exemption was correct, we base our decision on the provisions of Explanation 2 to Section 13 of the Act, without expressing any opinion on the correctness or otherwise of the finding given by the Tribunal that the assessee trust cannot be said to be created or established for the benefit of any particular community or caste.

7 The question is accordingly answered in favour of the assessee and against the revenue.

8 The Reference stands disposed of accordingly with no order as to costs.

(M.S.Shah, J) (D.A.Mehta, J)
m.m.bhatt